

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

DELMER B. GARRETT, )  
vs. )  
Plaintiff, )  
vs. )  
ENDEAVOR ENERGY RESOURCES, L.P., a )  
foreign corporation, and )  
AUTRY STEPHENS, )  
Defendants. )  
Case No. 05-CV-399-GKF-PJC

## **OPINION AND ORDER**

Before the Court is Defendant Endeavor Energy Resources, L.P.’s (“Endeavor”) Motion to Dismiss [Dkt. # 86]. Endeavor has attached to this motion an affidavit which disputes factual contentions made in the Amended Complaint [Dkt. # 56]. When a district court relies on material from outside the pleadings, the court must convert the motion to dismiss into a motion for summary judgment. *Lamb v. Rizzo*, 391 F.3d 1133, 1136 (10th Cir. 2004). When such a conversion occurs, the district court “must provide the parties with notice so that all factual allegations may be met with countervailing evidence.” *Burnham v. Humphrey Hospitality Reit Trust, Inc.*, 403 F.3d 709, 713 (10th Cir. 2005).

Since Endeavor's Motion to Dismiss contains material from outside the pleadings upon which the Court may rely, this Court hereby converts Endeavor's motion to dismiss into a motion for summary judgment.

IT IS ORDERED that plaintiff Delmer B. Garrett has an additional twenty (20) days, or until August 14, 2007, in which to respond to the converted motion for summary judgment and to provide countervailing evidence in opposition to the motion.

Dated this 25<sup>th</sup> day of July 2007.

Gregory K. Frizzell  
Gregory K. Frizzell  
United States District Judge  
Northern District of Oklahoma